

REMARKS

The Examiner's comments together with the cited references have been carefully studied. Favorable reconsideration in view of the following remarks is respectfully requested. The following rejections have been applied:

I. Claims 1, 3, 5-9, 13, and 18-21 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Gallo et al. US 2003/0107636, as evidenced by Lawrence et al. US 6,454,404, in view of Landry-Coltrain et al. US 2003/0138608.

II. Claims 1, 3, 5-9, 11, 13, and 15-24 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Gallo et al., as evidenced by Lawrence et al. in view of Tang et al. US 6,632,485.

It is noted that both rejections are predicated on obviousness with Gallo et al. being the primary reference. Further, rejection I. relies on Landry-Coltrain et al. and rejection II. relies on Tang et al. as evidence of the claimed water swellable non-porous lower layer at less than 0.67 swellability.

The enclosed Declaration Under Rule 131 serves to remove the Gallo et al. reference as an effective publication through 35 USC 102(a). The following "Statement of Common Ownership" serves to remove Gallo et al. as a reference through Section 102(e). Thus, Gallo et al is not an effective reference.

The enclosed Declaration Under Rule 132 serves to overcome the asserted inherency of the two secondary references. The Examiner asserts that it is presumed that the layers described in these two secondary references employ a lower non-porous layer having the requisite low level of swellability. The enclosed Declaration Under Rule 132 is sufficient to overcome this presumption.

It is additionally noted that the Gallo et al. reference fails to teach, disclose, or suggest at least the following: 1) the second type of hydrophobic polymer with Tg lower than about 25°C; 2) the presence of particles that are fusible but not cross-linkable that can therefore be fused subsequent to printing; 3) a monodisperse particle distribution in the upper layer; and 4) a base layer containing gelatin.

In view thereof, it follows that the subject matter of the claims would not have been obvious over Gallo et al. as evidenced by Lawrence et al. in view of Tang et al. at the time the invention was made.

STATEMENT OF COMMON OWNERSHIP

Applicants' attorney hereby affirms that the present application and cited Gallo et al., US 2003/0107636, were, at the time the invention was made, owned by, or subject to an obligation of assignment to, the same person.

In view of the foregoing remarks, declarations, and Statement of Common Ownership, the claims are believed to be allowable and such favorable action is courteously solicited. It is requested that claims 26 and 27, directed to a method of using the element of claim 1 be rejoined with the remainder of the claims as provided in accordance with MPEP 806.05(h).

Should the Examiner consider that additional amendments are necessary to place the application in condition for allowance, the favor is requested of a telephone call to the undersigned counsel for the purpose of discussing such amendments.

Respectfully submitted,



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If the Examiner is unable to reach the Applicant(s) Attorney at the telephone number provided, the Examiner is requested to communicate with Eastman Kodak Company Patent Operations t (585) 477-4656.

U.S. Serial No. 10/795,836